> . . . [T]he influence must be to the degree that a minority shareholder is able to 'determine' the licensee's policies and operation, or 'dominate' corporate affairs.[30]

As discussed below, any lender today would be foolhardy to attempt to influence or control a broadcaster because newly developed "lender liability" law might make it liable to the station, the station's other creditors and other parties.

IV. APPLICATION OF THE UNIFORM COMMERCIAL CODE RULES AND RELATED LAW TO THE BROADCASTING INDUSTRY.

A. OVERVIEW OF THE LAW.

Throughout the United States, security interests are governed by Article 9 of the Uniform Commercial Code (the "U.C.C."). The U.C.C., as enacted by the states, sets forth the rules for obtaining, perfecting and foreclosing security interests in personal property and fixtures, including accounts receivable, inventory, equipment and other intangible rights such as copyrights, trademarks, good will and licenses to use property owned by others.

A creditor may obtain a security interest by having the debtor sign a security agreement that contains a description of the

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[30] 97 F.C.C.2d 349, at 356, 55 R.R.2d 945, at 950 (1984).

collateral.[31] For additional protection from other creditors and trustees in bankruptcy, a secured party may "perfect" its security interest. For purposes of the U.C.C., broadcast licenses constitute "general intangibles".[32] A security interest in general intangibles is perfected by filing a financing statement in the appropriate office.[33] The financing statement must contain, among other things, the names and addresses of the secured party and the debtor, a description of the collateral, and the debtor's signature.[34]

A secured party with a perfected security interest in the collateral generally has rights in the collateral which are superior to the rights of other creditors and trustees in bankruptcy.[35] However, it should be emphasized that by obtaining and perfecting a security interest in the collateral, a secured party does not obtain any right whatsoever to control the operations of the debtor or the collateral. No provision of the U.C.C. or any other law gives the secured party any such right. In fact, over the last fifteen years, many courts throughout the United States

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[31] U.C.C. § 9-203(1)(a).

[32] U.C.C. § 9-106.

[33] U.C.C. §§ 9-302(1), 9-401(1).

[34] U.C.C. § 9-402(1).

[35] U.C.C. § 9-301(1)(b), 11 U.S.C. § 544(a).

have imposed "lender liability" upon secured parties which attempt to exercise any control over the debtor's operations or the collateral.

For example, in *A. Gay Jenson Farms Co. v. Cargill, Inc.*,[36] the Minnesota Supreme Court held that a secured party that assumed control over the debtor's business was liable as a principal for the obligations of the debtor to other creditors. This decision was based on Section 14 O of the Second Restatement of Agency, which states in comment a:

> [If a secured party] takes over the management of the debtor's business either in person or through an agent, and directs what contracts may or may not be made, he becomes a principal, liable as any principal for the obligations incurred thereafter in the normal course of business by the debtor who has now become a general agent. The point at which the creditor becomes a principal is that at which he assumes de facto control over the conduct of his debtor, whatever the terms of the formal contract with his debtor may be.

Similarly, in *In re American Lumber Co.*,[37] the United States District Court for the District of Minnesota subordinated the claim of a secured party that exercised control over the debtor's operations and the collateral. In *Connor v. Great Western Savings & Loan Ass'n.*,[38] a

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[36] 309 N.W.2d 285 (Minn. 1981).

[37] 5 B.R. 470 (D. Minn. 1980).

[38] 69 Cal. 2d 850, 73 Cal. Rptr. 369, 447 P.2d 609 (1968).

controlling secured creditor was held liable for negligence in the construction and sale of defective homes by a thinly-capitalized debtor. In *State National Bank of El Paso v. Farah Manufacturing Co.*,[39] a lender was held liable to the borrower in the amount of $18,647,243.77 for interfering with the management of the borrower. In *Melamed v. Lake County National Bank*,[40] the court upheld a claim against the lender for interfering with the borrower's business and operations. Moreover, a controlling creditor may be held liable under the securities laws, the tax laws and the environmental laws. *See, e.g., Metge v. Baehler*,[41] *Jersey Shore State Bank v. United States*,[42] *U.S. v. Fleet Factors Corp.*[43]

These are just a few of the many cases and theories imposing substantial liability upon creditors which attempt to exercise control over the debtor's operations or the collateral. Secured parties throughout the country are well aware of these cases and theories which effectively deter them from exercising such control.

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[39] 678 S.W.2d 661 (Tex. App. 1984).

[40] 727 F.2d 1399 (6th Cir. 1984).

[41] 762 F.2d 621 (8th Cir. 1985) *cert. denied*, 106 S. Ct. 798 (1986).

[42] 479 U.S. 442 (1987).

[43] 901 F.2d 1550 (11th Cir. 1990).

In the event the debtor defaults on its obligations to the secured party, the secured party has the right to foreclose its security interest.[44]

There are two alternative ways that a secured party may foreclose its security interest. The first alternative is for the secured party to sell the collateral to a third party.[45] This is the procedure used in virtually all cases. In so doing, the secured party never takes ownership or control of the collateral.

The second alternative is for the secured party to propose to take ownership of the collateral in full satisfaction of the debtor's obligations.[46] However, for three reasons, secured parties almost never take ownership or control of the collateral under this second alternative. First, lenders do not want to take assets in satisfaction of debt; lenders want to be paid with money.

Second, if the secured party takes ownership of the collateral, the secured indebtedness is deemed to be paid in full. If the collateral is worth less than the unpaid amount of the debt, a secured party which takes ownership of the collateral can not preserve its claim against the debtor for the deficiency.

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[44] U.C.C. § 9-501(1).

[45] U.C.C. § 9-504.

[46] U.C.C. § 9-505(2).

Third, after the secured party proposes to accept the collateral in full satisfaction of the debt, the debtor may prevent the secured party from doing so by sending a written objection to the secured party.[47] This objection precludes any opportunity to take ownership of the collateral and forces the secured party to sell the collateral to a third party.

B. CURRENT RESULTS OF THE "RULE" AGAINST SECURITY INTERESTS.

Applying the law outlined in Section A is challenging even for the people who deal with it every day. For those who do not, it can look something like a legal slight-of-hand game. When this unique broadcasting regulation regarding security interests is added to the mix, the result is a staggering intellectual exercise. It is proof once again that any time you pinch a system in one place, it will pop out of alignment in another. The effects of this misalignment are now being felt by lenders, broadcasters and the public.

As a practical matter, the granting of a security interest in all the assets of the broadcaster's business does not become a problem until the business fails to meet its obligations. As long as payments are being made on the loan, the "rights" of the lender and the debtor remain

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[47] U.C.C. § 9-505(2).

hypothetical. It is only when the payments stop and the loan documents are dusted off, that the rights and remedies listed there become important because they will, theoretically, govern the activities of the parties and the distributions that will be made.

Because proceedings under Chapters 7 and 11 of the Bankruptcy Code have many advantages for debtors and they can choose this forum for the adjudication of most disputes over debts by voluntary petitions, the enforcement of most secured interests takes place in Bankruptcy Court. However, if the debtor does not choose this route or is unable to do so, a secured creditor could pursue other remedies available under the U.C.C.

If a bank loans money to a broadcaster on the basis of a security interest in all the assets of the business (the market value) and the broadcaster defaults on the loan, the bank has several options available under the U.C.C.:

a. Obtain a Judgement on the Underlying Obligation and Proceed by Execution and Levy.

The bank would sue the broadcaster for breach of its agreement to pay, and any defenses available to the broadcaster would be sorted out by a court. If the court finds that the broadcaster has breached the promise, it will award a judgement for the unpaid debt to the lender.

The bank then obtains a document (usually called a "writ of execution") from the clerk of court and takes it to the appropriate official (usually the sheriff). That person would go to the broadcaster's place of business and seize any assets found there (this is generally referred to as a "levy"). He might also go to the broadcaster's bank and seize any assets there. The assets that can be seized are not limited to those listed in the security agreement but include any that can legally be levied on, so any personal property including studio, office and transmitter equipment would be taken as well as any real estate. This would, in most cases, take the station off the air.

The sheriff would then sell all the property, and the proceeds would be used to pay the judgement holder. Any excess, after payment of all costs, would be paid to the broadcaster.

It is easy to see why this procedure is seldom used. The broadcaster is left with a bare license that must be returned to the F.C.C. and can not be sold or used at another facility. The bank will be able to recover only the value of the assets sold by the sheriff. Once again, the true value of the business evaporates and is not available to anyone.

The procedure is also hampered by the fact that all of the broadcaster's creditors may be trying to get judgments and are racing each other to levy first. In most cases the debtor will avoid these lawsuits by filing for protection in Bankruptcy Court.

b. Repossession - Self Help.

A bank could simply exercise its rights under the security agreement and go to the station and seize all the assets covered by the agreement once the debtor is in default. Creditors seldom exercise this option because of the potential liability for the creditor if anything is done improperly. All the broadcaster would have to do to prevent such a seizure is to vehemently protest the action, making it impossible to accomplish the repossession without a "breach of the peace." In addition, a creditor is unlikely to exercise this option because it would destroy any opportunity to sell the business for its full value because it is impossible to "seize" the license without the concurrence of the licensee (evidenced by signing an application for assignment). If the tangible assets are seized, the bank can keep them in full satisfaction of the debt or sell them and give any money above the amount of the debt to the broadcaster. Since a bank would have very little use for broadcasting equipment without the right to operate it, it would almost certainly follow the second route if it chose this option.

c. Repossession - Judicial Action.

The bank could also repossess by bringing a judicial action, usually called a replevin action. In this case the bank would file a complaint with the court and post the appropriate bond. The bank could then ask the sheriff to seize the collateral listed in the loan agreement.

The sheriff will seize only the hard assets since it is impossible to take control of the license without the approval of the F.C.C. or (on a temporary basis) a court. If the broadcaster does not object, the property will be delivered to the bank pending final judgement. If the broadcaster does object, possession can be kept by posting a bond for 120% of the collateral value.[48] Here, again, the bank could find itself in possession of the land, building, transmitter, and studio equipment but without authorization to operate it, and the broadcaster has the authority to broadcast but no way to do so.

A possible option in such a situation is for both parties to agree to the appointment of a receiver by the court to run the business until the dispute is settled. This transfer of authority to a trustee is handled in the routine fashion at the F.C.C.

If the court finds that the bank is entitled to the collateral, it will award it to the bank. Theoretically, at this point the license and equipment would be split and most of the market value would evaporate. In most cases the broadcaster and the bank would compromise at this point because evaporation of the value of the license would be in neither party's interest. They would probably agree that the business should be sold as a "going business" and agree on the distribution of the proceeds. Thus, the final result (sale to a new owner) would be the same, but the

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[48] This procedure varies somewhat from state to state.

broadcaster would be able to demand a share of the proceeds that it would not have been entitled to if the entire security interest had been recognized.

But this scene is also unlikely to be played. Since the bank must give the broadcaster notice of its intent to repossess, a petition in bankruptcy by the broadcaster or unsecured creditors is the next step in almost all cases, stopping any action to repossess. The rights of the parties and control of the station would then be handled as discussed below for a bankruptcy case under Chapter 7 or 11.

C. CHANGES IN THESE RESULTS IF A SECURITY INTEREST IS RECOGNIZED UNDER THE U.C.C.

The recognition of a security interest in the license will allow the parties and the courts to keep the equipment and the right to operate it together. In *very* bad situations this may not change the outcome because there may be no buyer for the station and the only assets available for sale will be the equipment.

In other cases the outcome will be unchanged because the parties will not have made specific provisions for repossession of the intangible property interest in the license. As noted above, an intangible property interest is typically difficult (or impossible) to repossess or levy on unless the parties have made specific provisions for an orderly and efficient transfer in case of default.

Thus, a security interest granted by a broadcaster in all the station's assets can be enforced efficiently under the U.C.C. while meeting the F.C.C.'s rules regarding assignment or transfer of control. Since foreclosure on an intangible asset must, for practical reasons, be done by a judicial action (either a replevin or a judgment on the obligation), no transfer of the authority to operate the station can take place without a court order. Any temporary transfer of the collateral from the current licensee will be to a court-appointed receiver whose sole authority is to run the business until it can find a buyer approved by the F.C.C.

The F.C.C. will *not* become involved in disputes between debtors and lenders because it will continue its present practice of giving full recognition to the decisions of the courts that decide these matters. It will continue to process court-ordered transfers to receivers and trustees on a expedited basis and apply its full review process to the purchaser from the receiver/trustee.

V. APPLICATION OF THE BANKRUPTCY CODE TO THE BROADCASTING INDUSTRY.

A. PETITIONS FOR BANKRUPTCY UNDER CHAPTER 7.

1. OVERVIEW OF THE LAW.

Chapter 7 of the Bankruptcy Code is the chapter that provides for liquidation of an entity. When a bankruptcy case is filed, an order is automatically entered prohibiting all creditors from taking any action to collect a debt without permission from the Bankruptcy Court. Also, when the bankruptcy petition is filed, all the assets of the company are automatically transferred to the bankruptcy estate. A trustee is appointed to oversee the orderly liquidation and administration of the bankruptcy estate. A business can file a voluntary petition under Chapter 7, or its unsecured creditors can petition for an involuntary liquidation.

Contrary to the impression given in some of the comments filed in this proceeding, *involuntary* bankruptcies are extremely rare and account for only .2% of all bankruptcy cases filed in 1990.[49]

Normally the Bankruptcy Code requires that all business operations cease upon the filing of a bankruptcy petition under Chapter 7. However, the Bankruptcy Code does allow a trustee to operate a business, for a limited time, if it is in the best interests of the creditors.

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[49] 725,484 cases were filed nationally in 1990. Only 1,680 were involuntary. These statistics were obtained from an administrator for the U.S. Bankruptcy Court for the State of Minnesota.

Obviously, to operate a business, proceeds from accounts receivable and other funds are needed to insure that all business expenses are paid. But a secured creditor who has a lien on all the assets of the business usually takes the appropriate steps to obtain control of the assets and liquidates them under the U.C.C. There is no reason for that creditor to wait. Since that creditor would only receive a small portion of the proceeds of the sale of unencumbered assets, a secured creditor is not motivated to fund the trustee to operate the business.

The trustee sells, for the best price possible, any unencumbered assets and distributes the proceeds of those sales to the unsecured creditors on a pro rata basis.

2. CURRENT RESULT OF THE RULE AGAINST SECURITY INTERESTS.

In the case of a bankrupt broadcaster, it is essential that the trustee be able to operate the business and sell it as a going concern, or virtually all value of the business will be lost once the business quits broadcasting. In order to continue operation, the creditors generally must be cooperative and provide financing to allow a trustee to operate the business.

During the time the business is controlled by the trustee, it is operated in such a way that the value of the business is preserved as much as possible. Obviously, this means that service to listeners/viewers and advertisers is not reduced because to do so would affect revenue and that would affect the market value of the station. Since the trustee is not an expert in broadcasting, he or she must hire agents to assist in the broadcasting operations, usually this means the management of the current license or other local experts.

The transfer of control to the trustee is handled as a routine matter by the Commission, apparently in the belief that the public interest does not suffer during this transition period. Ultimately, the trustee finds a buyer and, after the Commission approves the transfer, the buyer becomes the licensee.

The proceeds of sale are distributed pursuant to the Bankruptcy Code and state law. First, secured creditors are paid the proceeds from the assets upon which they have a properly perfected security interest. After payment to secured creditors, the remaining proceeds are distributed to unsecured creditors (including the remaining part of the secured creditor's claim) on a pro rata basis.

It is at this point that the issues raised in this petition become very important. The unsecured creditors, through the trustee, will try to defeat any claims that other creditors are secured to enhance the amount available to pay unsecured creditors. Since the trustee's compensation is based upon payments to *unsecured* creditors, the trustee will argue that the security interest encumbering an F.C.C. license is illegal or ineffective under F.C.C. rules. If the Bankruptcy Court is convinced that the security interest can not apply to the license (the right to continue to operate the station), but only to the physical assets, the money available to pay the unsecured creditors is increased.

Besides skewing the operation of the Bankruptcy Code, this results in business behavior that would not be found in other industries because unsecured creditors have more incentive to provide goods and services long after they would have cut another businesses off. At the same time, these unsecured creditors have greater leverage over the debtor and any secured creditor by threatening to send the station into involuntary bankruptcy and attacking the security interest. Lending institutions (and their regulators), on the other hand, are far less likely to approve operating loans for the interim operation of the business because the laws that usually protect the priority of their claims are not available.

3. CHANGES IN THESE RESULTS IF A SECURITY INTEREST IN THE LICENSE IS RECOGNIZED IN A CHAPTER 7 PROCEEDING.

A recognition of a security interest will have no effect on the transfer of ownership and control to the trustee currently implemented and approved of by the Commission. What will change is an increased likelihood that a creditor with a properly perfected security interest in the license and the other business assets will cooperate with the trustee and the Bankruptcy Court to allow the station to operate and be sold as a going concern.

Upon a sale, the secured creditor will be paid in full or receive the vast majority of the sales proceeds since it has a security interest in *all* the assets. Since the business will be operated while looking for a purchaser, time constraints will be less of an issue and the best purchaser will be sought.

Further, the creditor who has a lien on the assets, will likely assist the new purchaser in financing the operation. A more orderly transition is possible. A larger recovery for all parties is more likely.

This may change the relative bargaining position of some parties in Chapter 7 bankruptcy cases. The pool of money available to pay unsecured creditors may be decreased. Some program suppliers and other unsecured creditors will almost certainly lose more money. In future dealings with broadcasters, unsecured creditors will treat broadcasters like all their other clients and may cut off services sooner because there will be fewer assets available to pay them.

On the other hand, a going concern sale will, in all cases, result in a recovery sufficient to the secured creditors and allow for a better distribution to unsecured than an immediate liquidation after bankruptcy. In which case, all creditors and the public benefits.

The leverage of the debtor station would be reduced in case of a loan default because it would gain little by threatening to file for bankruptcy or refusing to sign an assignment of the license. In return for access to more capital at lower rates, the broadcaster would be forced to play by the rules that apply to all other businesses.

A creditor with a perfected security interest will be able to keep the proceeds of everything covered by that interest away from other creditors until all the secured claims are paid. However, these same lending institutions (which could now justify loans to their regulators) would be more willing to extend additional credit (even to lend money to pay unsecured creditors) or refinance all the station's debt as long as the loan is collateralized by the fair market value of the property, thus keeping the station out of a default situation in the first place.

B. REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE.

1. OVERVIEW OF THE CHAPTER 11 REORGANIZATION PROCESS.

When a business defaults on its debts, its lenders and suppliers frequently commence suits and otherwise exert pressure to force payment. If there is enough value in the business to justify restructuring, the business would seek the protection of Chapter 11 of the Bankruptcy Code in order to reorganize its business and continue operations.

As in a Chapter 7 case, once a bankruptcy is filed, the automatic stay prohibits creditors from taking any acts to collect their debts without permission of the Bankruptcy Court. And, like a Chapter 7 case, all the assets owned by the business are automatically transferred to the bankruptcy estate. Unlike a Chapter 7 case, the current management is allowed to continue in place and operate the station as a debtor in possession. The debtor in possession acts as a trustee or fiduciary to all of its creditors to protect the assets of the business and promptly reorganize. A debtor in possession is prohibited from disposing of assets or doing anything that is out of its ordinary business operation without court permission.

There are also protections for creditors, particularly secured creditors, in Chapter 11 bankruptcies. The business will have to provide adequate protection for that creditor from any diminution of the assets' value while in Chapter 11. These protections encourage cooperation by secured creditors since they are receiving some payment during the bankruptcy and will receive the full value of their collateral in any plan of reorganization.

The goal of a Chapter 11 bankruptcy is for the debtor to propose a plan of reorganization that complies with all the rules of the Bankruptcy Code and that its creditors accept through a voting process.

2. CURRENT RESULT OF THE RULE AGAINST SECURITY INTERESTS.

When a broadcaster files for reorganization under Chapter 11, the value of its unencumbered assets must be paid to unsecured creditors in the plan of reorganization. Secured creditors, generally, must be paid the value of the collateral which secures their claim. Therefore, the more unsecured assets that a business has, the larger the distribution to general unsecured creditors.

However, secured creditors that are facing large shortfalls due to their inability to enforce a lien frequently become impatient in a bankruptcy process. Since they will receive a relatively small distribution in a reorganization process, these financial institutions are not motivated to work with the debtor to reorganize. Instead, these creditors frequently evaluate the assets and determine that if the company is liquidated immediately, they will receive nearly as much of the proceeds as they would receive through a plan of reorganization that will take months, if not years. With only a nominally larger return by allowing a company to reorganize, frequently the secured creditors will decide to take their losses immediately and force a liquidation of the business.

Once again, the Commission's rule against security interests in the license becomes important in the process because it distorts the value of the business and the rights of debtors. It would allow a debtor to propose a plan that provides for full payment of a secured party's claim only up to the value of the tangible assets of the station, far short of what that creditor is owed.

If the Bankruptcy Court feels bound by the F.C.C. rule (in spite of the obvious intent of the parties that the loan was based on the market value of the business), the lender has lost the priority of its claim and will either force a liquidation or be forced to accept a plan that pays far less than the amount of the debt.

Normal business expectations (and future lending decisions) are distorted by the inability of the Bankruptcy Court to recognize the real value of the most important asset of the business. This could result in the evaporation of assets that had been valued in the market, an economic inefficiency that has little to recommend it in any industry.

3. RESULT IF A SECURITY INTEREST IS RECOGNIZED IN A CHAPTER 11 PROCEEDING.

If the Commission grants this petition, it will have an immediate impact on the amount that many of the parties in Chapter 11 reorganization proceedings receive. It would not, however, change the procedures for control of the station during the bankruptcy or for the transfer to a new owner.

It may mean that some broadcast businesses will not be able to devise any plan that will provide for the payment of their full debts to secured lenders and their stations will be sold to someone else. However, this process will be done in an orderly manner under the supervision of the Bankruptcy Court.

However, in many cases, since the secured creditors now have confidence that they will receive a substantial amount of their debt, they will be more likely to work with broadcasters to reorganize. Since the Bankruptcy Code allows a business to "cram down" a plan of reorganization on certain interests, including secured creditors under appropriate circumstances, the lenders are motivated to negotiate to receive the best treatment possible. Frequently, future funding for the business is exchanged for the best possible treatment allowed under the Bankruptcy Code.

But in some currently active (and soon to be filed) cases it will mean that a lending institution will agree to refinance all of the debts as senior lender. Since this institution could be a bank (and not a lender specializing in high risk interest rates), the cost of the refinanced debt could actually be lower due to current low interest rates available for such loans. The broadcaster would have lower debt payments, the unsecured creditors would be paid, and there would be no interruption in ownership or service to the public.

VI. HAS THE PUBLIC INTEREST IN THIS ISSUE CHANGED?

As discussed in Section I, there is now no doubt that the communications industry is about to undergo a transformation of epic proportions. Defining the "public interest" during this transition may be the most daunting challenge ever faced by those charged with regulating communications. But the Commission can not avoid this task by mechanically applying the public interest definitions of the past. Its duty to reexamine the "public interest" when circumstances change was clearly articulated in *Geller v. F.C.C.*:

> And it goes without saying that the agency cannot sidestep a reexamination of particular regulations when abnormal circumstances make that course imperative.[50]
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> . . . Even a statute depending for its validity upon a premise extant at the time of enactment may become invalid if subsequently that predicate disappears. [cite omitted] It can hardly be supposed that the vitality of conditions forging the vital link between Commission regulations and the public interest is any less essential to their continuing operation. [cite omitted] We hold that the Commission is statutorily bound to determine whether that linkage now exists.[51]

In that case the court said such a new inquiry need not be a new rulemaking proceeding, ". . . so long as it is promptly pursued in some suitable manner."[52] Since these petitions seek a clarification of prior statements that are not Commission "rules", the procedural posture of the petitions is clearly proper and a full rulemaking proceeding is neither necessary nor desirable. The Commission now has before it well-articulated arguments from all of the parties directly affected.

But the interests of broadcasters, lenders and suppliers are not *necessarily* coterminous with the interests of the public.[53] The

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[50] 610 F.2d 973, at 979, (U.S. Ct. App. Dist. Col. 1979).

[51] *Id.* at 980.

[52] *Id.* at 980 n.59.

[53] *F.C.C. v. RCA Communications*, 346 U.S. 86, 73 S. Ct. 998, 97 L. Ed. 1470 (1953); *Kessler v. F.C.C.*, 326 F.2d 673 (U.S. App. D.C. 1963).

declarations in these comments and those filed by others (both supporting and opposing the petition) that the continued financial health of current license holders is in the public interest, does not, of course, end the discussion. The Commission has identified a number of specific interests of the *public*. In this section we examine the impact that granting the petitions would have on those interests.

A. DIVERSITY OF OWNERSHIP/INDEPENDENT VOICES.

In 1970, the Commission decided that limiting licensees to one station per market was in the public interest because this ensured that all the "voices" in that market would be independent, and, through this diversity, the best answers to public problems would emerge.

> A proper objective is the maximum diversity of ownership that technology permits in each area. We are of the view that 60 different licensees are more desirable than 50, and even that 51 are more desirable than 50 . . . . It may be the 51st licensee that would become the communi-cation channel for a solution to a severe social crisis.[54]

As noted in Section I of these comments, the continued reasonability of enforcing ownership restrictions has now been called into question by changed economic conditions. However, this does not mean

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[54] *In the Matter of the Rules Relating to Multiple Ownership*, 22 F.C.C.2d 306, 18 R.R.2d 1735 (1970).